

Purchase Terms & Conditions

1. Definitions

In these Terms and Conditions:

"Act" means the *Corporations Act 2001 (Cth)*.

"ADC" means the Australian Disputes Centre.

"Company" means the party named as the buyer of the Goods and/or Services in the Purchase Contract being any of the following: Fenner Dunlop Australia Pty Ltd ABN 23 080 570 574, Conveyor Products and Solutions Pty Ltd or Conveyor Pulleys and Solutions Pty Ltd.

"Company Tools" means any tooling, dies, gauges, jigs, fixtures, moulds, equipment, patterns and other facilities supplied by the Company or its Related Body Corporate, either directly or indirectly, to Supplier or paid or to be paid for by the Company or its Related Body Corporate.

"Force Majeure" means an act of God, a strike, a lockout, act of public enemy, civil commotion, act of war or terrorism, blockade, riot, state of emergency, lightning, fire, storm, flood, washout, explosion, Government restraint, or any form or Government intervention and any other cause which is not within the control of the party alleging it, including an epidemic or pandemic declared by the World Health Organisation, which directly affects that party's ability to perform its obligations arising under the Purchase Contract and cannot be mitigated by undertaking reasonable commercial endeavours (provided that the inability to mitigate does not arise to the relevant party's failure to take reasonable precautions).

"Goods" means the products specified in the Purchase Contract.

"GST" and **"Tax Invoice"** will have the meaning attributed to those terms in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

"INCOTERMS" means the standard accepted commonly used trade Terms and Conditions utilised in international trade as published by the International Chamber of Commerce and entitled "Incoterms 2000".

"Insolvency Event" means the occurrence of any of the following events:

- (a) where a party is a natural person, the person becomes bankrupt, files or is served with a petition in bankruptcy or is served with a bankruptcy notice, the person is unable to pay his/her debts as and when they become due and payable or a creditor's meeting in relation to the person is called;
- (b) an application is made to a court for an order or an order is made that a body corporate be wound up, and the application is not withdrawn, stayed or dismissed within 21 days of being made;

- (c) appointment of a liquidator, provisional liquidator, administrator, receiver, receiver and manager or controller in respect of a body corporate or its assets;
- (d) except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
- (e) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved;
- (f) a body corporate is or states that it is insolvent as that term is defined in section 95A of the Act;
- (g) as a result of the operation of section 459F(1) of the Act, a body corporate is taken to have failed to comply with a statutory demand;
- (h) a body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is the subject of an event described in section 459C(2)(b) or section 585 of the Act;
- (i) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable law;
- (j) a body corporate ceases to carry on business; or

anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

"Intellectual Property Rights" means patents, design rights, copyrights, trademarks and **service** marks (whether registered or not and applications for any of the foregoing) know-how and rights of a like nature throughout the world.

"Law" means any requirement of any statute, rule, regulation, proclamation, ordinance or by-law, present or future and whether state, federal or otherwise.

"Material Adverse Change" means any change to the circumstances of the Company (beyond the reasonable control of the Company) which the Company believes has a material adverse impact on the ability of the Company to utilise the Goods and/or Services. A Material Adverse Change includes, but is not limited to, the cancellation or variation of an order for products or services, into which the Goods and/or Services have been incorporated, by an entity to which the Company supplies the said products or services.

"Modern Slavery" means any activity, practice or conduct that would constitute an offence in relation to slavery, forced labour, involuntary servitude, debt bondage, human trafficking, forced or servile marriage, the sale and exploitation of children and other slavery-like exploitation as prohibited or defined as a modern slavery offence under anti-slavery and human trafficking Laws. For the avoidance of doubt, Modern Slavery includes any conditions or practices similar to those prohibited under those Laws.

"Purchase Contract" means the purchase contract issued by the Company and accepted by Supplier stipulating the Goods and/or Services to be supplied, the agreed price for the Goods and/or Services and other details relevant to the supply of the Goods or the performance of the Services. The Purchase Contract includes any document sent by the Company to Supplier stipulating the quantity and timing of the delivery of the Goods or the performance of the Services. The Purchase Contract includes and is subject to these Terms and Conditions.

"Related Body Corporate" has the same meaning as this term has under the Act.

"Services" means the services (if any) specified in the Purchase Contract.

"Supplier" means the seller of the Goods and/or Services specified in the Purchase Contract.

"Technical Materials" means all plans, designs, drawings, engineering information, data, specifications, reports, accounts and other material of a technical nature.

"Tender" means any document, drawing, specification or design issued by the Company pursuant to which the Company has agreed to purchase the Goods and/or Services from Supplier as described in the Purchase Contract. This includes, but is not limited to, documents, drawings, specifications or designs of an entity to which the Company supplies products.

"Tender Documents" means the documents applicable to the Tender (if any).

"Terms and Conditions" means these "Purchase Terms and Conditions".

2. General

- (a) These Terms and Conditions override any inconsistent terms and conditions in any document or communication used by Supplier in relation to the supply of Goods and/or Services (including any terms and conditions that may be printed on the underside of or attached to an invoice or delivery docket provided by Supplier) or that form part of the Purchase Contract.
- (b) If the Purchase Contract refers to a Tender the Tender Documents will form part of the Purchase Contract. Where the terms of the Tender Documents and these Terms and Conditions are inconsistent these Terms and Conditions will prevail.
- (c) If any INCOTERM is nominated in the Purchase Contract, the terms of INCOTERMS applies except as otherwise provided or as inconsistent to these Terms and Conditions. The terms **"EXW"**, **"FCA"**, **"FAS"**, **"FOB"**, **"CFR"**, **"CIF"**, **"CPT"**, **"CIP"**, **"DAF"**, **"DES"**, **"DEQ"**, **"DDU"** and **"DDP"** have the meaning these terms are given in the INCOTERMS.

3. Acceptance

If written acceptance of the Purchase Contract is not provided by Supplier to the Company, either oral acceptance or the commencement of supply of Goods and/or Services by Supplier will constitute acceptance by Supplier of the terms of the Purchase Contract, including these Terms and Conditions.

4. Price

- (a) The price of the Goods and/or Services is fixed in accordance with the prices listed on the Purchase Contract and is not subject to increases in price without the Company's prior approval in writing. Unless an INCOTERM to the contrary is agreed to by the parties and nominated on the Purchase Contract, the price of the Goods includes the cost of packaging, storage, insurance, delivery to the destination stated in the Purchase Contract and the off-loading of the Goods and/ or Services (as applicable) by Supplier at the point of destination.
- (b) The Price includes any applicable GST. Where GST is payable either:
 - (1) Supplier must provide the Company with a Tax Invoice that complies with all requirements in the GST Act at or before the time for payment; or
 - (2) the Company may require Supplier to accept a Recipient Created Tax Invoice (as provided for in the GST Act) as created by the Company.
- (c) Supplier must submit monthly itemised invoices to the Company in a form approved by the Company. Unless otherwise stated on the face of the Purchase Contract, the Company will have at least 60 days from the end of the month in which it receives, to pay Supplier the invoiced amount. The Company may withhold any amount that it disputes in good faith until the dispute has been resolved. The Company will not be required to pay Supplier until Supplier has provided a valid Tax Invoice which complies with the requirements of this **clause 4**.
- (d) No interest is payable on the late payment of any amounts by the Company.
- (e) .
- (f) The Company will be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by Supplier.
- (g) In the case of an ongoing arrangement between the Company and Supplier with respect to the supply of Goods or Services, the Company will be entitled to seek quotes from other third party providers of equivalent goods or services at least once in any 12 month period during the term of the arrangement and, if requested by the Company, Supplier agrees to adjust the prices charged to the Company under these Terms and Conditions and a relevant Purchase Contract to prices that are equal to or more favourable to the Company than those offered by the relevant third party providers.

5. Delivery and performance

- (a) Time is of the essence in relation to the delivery of Goods and/or performance of the Services and deliveries of the Goods and/or completion of the Services must be made both in the quantities, manner and at times specified in the Purchase Contract. In respect of any Goods provided under a Purchase Contract, delivery should be made to the location nominated in

the Purchase Contract or such other place nominated by the Company by providing Supplier at least 12 hours' notice of any change of delivery location. Unless otherwise agreed, deliveries will only be accepted by the Company during its normal business hours at the delivery location.

- (b) Supplier agrees that, in respect of any Goods, the cost of delivery is determined according to the INCOTERM nominated on the Purchase Contract, and if no INCOTERM has been nominated, delivery will be DDP.
- (c) If delivery of Goods and/or completion of Services is not made by the date specified in the Purchase Contract, or within a reasonable time if no date is specified, the Company will be entitled to refuse delivery of the Goods or completion of the Services and may terminate the Purchase Contract in respect of:
 - (1) the Goods undelivered or delivered late and of any Goods already delivered under this contract which cannot be effectively and commercially used by the Company by reason of the non-delivery or late delivery of the first mentioned Goods; and
 - (2) the Services which are not completed or a completed late and of any part of the Services performed but which cannot be effectively or commercially used by the Company by reason of the failure to complete or late completion of the first mentioned Services.
- (d) Without limiting the generality of **clause 13**, upon termination according to **clause 5(c)** the Company is entitled to:
 - (1) return to Supplier, at Supplier's risk and expense any Goods detailed in **clause 5(c)** and to recover from Supplier any money paid by the Company in respect of such Goods, and Goods already delivered but which cannot be effectively and commercially used due to non-delivery or late delivery of other Goods;
 - (2) recover from Supplier any money paid by the Company in respect of Services detailed in **clause 5(c)**, and Services already completed but which cannot be effectively and commercially used due to the failure to complete or late completion of other Services; and
 - (3) recover from Supplier any additional expenditure reasonably incurred by the Company in obtaining other goods or services in replacement of the Goods and/or Services detailed in **clause 5(c)** and any other damages and losses incurred by the Company arising from late or non-delivery of Goods or non-performance of Services or any part thereof, shipment must be sent by Supplier to the Company at the time the Goods are shipped, which must state the description of the Goods, the reference number of the Purchase Contract, the name of the vessel, the port of shipment or delivery, shipping route, the quantity loaded, the invoice amount and other particulars from time to time as requested by the Company.

- (e) Supplier must ensure that the Goods are suitably packed or otherwise prepared for shipment so as to secure the lowest transportation and insurance rates and in accordance with the carriers' requirements.
- (f) The packing and marking of the Goods must comply with the Laws of Victoria, Australia and any country from which the Goods are to be exported and in accordance with the instructions of the Company.
- (g) All documents related to the shipping of the Goods must be provided to the Company at the time that the Goods depart the port of export including, without limitation:
 - (1) the bills of lading;
 - (2) certificate of insurance;
 - (3) packing declaration;
 - (4) declarations to customs and quarantine authorities;
 - (5) evidence of payment of all customs duties and other charges; and
 - (6) certificate of origin of the Goods.
- (h) If Supplier considers Goods cannot be delivered or Services cannot be performed on time in accordance with the Purchase Contract, Supplier must notify the Company immediately and give to the Company an estimate of the period of delay and details of the steps which Supplier proposes to take to minimise the delay. Supplier must comply with the Company's reasonable instructions in order to minimise the delay.

6. Warranties

- (a) These Terms and Conditions are additional to all warranties, conditions and undertakings (statutory or otherwise) express or implied by the *Competition and Consumer Act 2010* (Cth) or any other applicable Law or as set out in the Tender Documents (if applicable).
- (b) Supplier warrants that to the Company that:
 - (1) all Goods and/or Services match the description and conform to the specifications, drawings, data and quality standards provided by Supplier or set out in the Purchase Contract or other document issued by the Company or its representatives to Supplier regarding the Company's requirements for the Goods and/or Services including, without limitation, the Tender Documents (if any). Where Supplier has given the Company a sample or demonstration model of the Goods, Supplier warrants that the Goods corresponds with that sample or demonstration model in terms of quality, state and condition. Any in-progress inspection by the Company's employees or agents or other representative does not affect the warranties contained in this sub-clause;

- (2) the Goods are new, of good title, of merchantable quality, made of good materials and workmanship, free from defects, encumbrance, lien or security interest and comply with all applicable laws, legislation, regulation and codes;
 - (3) the Goods are fit for the purpose for which goods of the same kind are commonly supplied and any purpose which the Company or its representatives make known to Supplier, and must be accompanied by any necessary instructions, technical documents, operating and service manuals and any applicable warranties. If a standard of performance is specified Supplier warrants that Goods will be capable of such performance;
 - (4) the Goods must carry any applicable manufacturer's warranty which passes on to any buyer or customer from the Company without liability to the Company. The Supplier must assign to the Company at the request of the Company the benefit of any warranty or guarantee that Supplier has received from any supplier (whether under contract or by implication or operation of law).
 - (5) it will provide all information reasonably required by the Company to report the export, import or transport of the Goods in a timely and accurate manner to enable the Company to observe its requirements pursuant to any Law;
 - (6) it holds good title to any Intellectual Property Rights in or associated with the Goods and/or Services and provides the Company, the successors, assigns, customers and users of the Company's products or services (incorporating the Goods and/or Services) and any Related Body Corporate of the Company a licence to use any Intellectual Property Rights in or associated with the Goods and/or Services;
 - (7) it holds all statutory licences, registrations, approvals, permits and authorisations as are necessary to supply the Goods and/or Services to the Company;
 - (8) it has the capabilities, skill, facilities and resources to perform the Services and that the Services will be provided with due care and skill.
- (c) Supplier agrees to defend, protect and completely indemnify (including legal expenses on the requisite hourly basis set by the Company's lawyers) the Company, its successor, assigns, customers and the users of the Company's products and/or services (incorporating the Goods and/or Services) and any Related Body Corporate of the Company from and against any claim arising by reason of the use of the Goods and/or Services, including all claims for actual or alleged infringement of any Intellectual Property Rights.
- (d) Without limiting the effect of **clause 8(a)**, Supplier agrees to indemnify and keep indemnified the Company against all and any liability arising from the breach of any warranty provided pursuant to **clause 6(a)**.

7. Inspection and return

- (a) All Goods are received and Services are performed subject to inspection within a reasonable time after delivery or completion or before delivery or completion at the Company's discretion irrespective of the date of payment. In respect of Goods, signed delivery dockets do not mean acceptance by the Company of the Goods delivered but only the number of packages or cartons delivered.
- (b) The Company may reject any Goods or Services or parts thereof that are not in accordance with the Purchase Contract or these Terms and Conditions. Notice of rejection will be provided to Supplier in writing by the Company and must specify the reasons for rejection. The Company is entitled to return the rejected Goods to Supplier at Supplier's expense and risk.
- (c) In all cases of rejection the Company may require Supplier to:
 - (1) make good or replace the rejected Goods with goods which are acceptable to the Company at Supplier's cost;
 - (2) make good the rejected Services and/or re-perform the rejected Services in a manner which is acceptable to the Company at Supplier's cost; or
 - (3) repay any money paid to Supplier in respect of the rejected Goods and/or Services,and the Company may terminate this contract.
- (d) If Supplier does not make good, replace or re-perform the rejected Goods and/or Services, by the date reasonably required by Supplier, the Company may (but has no obligation to) make good or replace the rejected Goods and/or re-perform or make good the rejected Services.
- (e) If, in the Company's reasonable opinion, it is necessary to immediately make good or replace the rejected Goods and/or re-perform or make good the rejected Services then the Company has no obligation to give Supplier an opportunity to make good or replace the rejected Goods and/or re-perform or make good the rejected Services (as applicable) before the Company does so.
- (f) At the Company's option and request, Supplier must:
 - (1) refund to the Company any payments made by the Company in respect of any rejected Goods and/or any rejected Services that the Company rejects (and, in the case of rejected Goods, reimburse the Company for any costs it incurs in returning the rejected Goods to Supplier);
 - (2) make good or replace (as applicable) free of charge any rejected Goods and make good or re-perform any rejected Services free of charge; or

- (3) reimburse the Company for any expenses the Company incurs in making good or replacing any rejected Goods and/or making good or re-performing any rejected Services under clause 7(d).
- (g) Without limiting the generality of **clause 13**, upon termination according to this clause:
 - (1) the Company is entitled to return to Supplier at Supplier's risk and expense any Goods previously delivered to the Company which cannot be effectively and commercially used by the Company and to recover from Supplier any moneys paid by the Company in respect of such Goods;
 - (2) the Company is entitled to recover from Supplier any moneys paid by the Company in respect of Services which have been performed but which cannot be effectively and commercially used by the Company; and
 - (3) Supplier is liable for any costs, loss or damage suffered or incurred by the Company in relation to Goods and/or Services that are rejected including the cost of replacement goods and/or re-performance of services.

8. Defective Goods and/or Services

- (a) Should any Goods or Services fail to conform to the warranties contained in **clause 6** or are otherwise unsatisfactory to the Company, the Company will notify Supplier and Supplier must, if requested by the Company, indemnify the Company for any incidental and consequential damages cause by such non-conforming Goods or Services, including but not limited to, costs, expenses and losses incurred by the Company:
 - (1) in inspecting, sorting, repairing or replacing such nonconforming Goods or Services;
 - (2) resulting from production interruptions;
 - (3) conducting recall campaigns or other corrective services actions regardless of whether such campaigns are conducted by the Company or an entity that the Company supplies to and regardless of whether the recall campaign relates to the Goods or a product in which the Goods have been incorporated; and
 - (4) claims for personal injury (including death) or property damage cause by such non-conforming Goods or Services.
- (b) If Supplier becomes aware of any matter which may affect the Goods or Services or the Company's use of the Goods or Services, Supplier must notify the Company in writing immediately of the matter giving full details of all relevant information. This includes anything which may affect the composition, characteristics or the Company's use of the Goods or Services, the health,

hygiene or safety of any person and Supplier's, the Company's or the Good's compliance with any Law, standard or code of practice.

9. Tooling to remain the Company's property

- (a) The Company Tools remain the Company's property whether during or after the termination of the Purchase Contract.
- (b) Supplier must keep the Company Tools in good condition and when necessary repair the Company Tools at its own expense.
- (c) Supplier agrees that it will not use any the Company Tools for any purpose other than to supply Goods and/or Services to the Company and will return and deliver up the Company Tools following the expiry or termination of the Purchase Contract.
- (d) Without limiting the generality of **clause 16**, the Company retains all Intellectual Property Rights in the Company Tools.

10. Changes, Cancellation and Variations

- (a) The Company may at any time direct Supplier in writing to change the Goods and/or Services or any aspect of the supply of the Goods and/or Services. Supplier's obligation to supply the Goods and/or Services following such a change will be subject to the parties agreeing upon the applicable prices, rates or charges acting reasonably and with reference to the prices, rates and charges set out in the Purchase Contract.
- (b) The Company may cancel or vary the Purchase Contract (in whole or part) at any time in response to a legitimate business need of the Company including, without limitation, a Material Adverse Change. The Company must give Supplier written notice of such cancellation or variation and must pay Supplier for all Goods delivered and/or Services performed up to the date of cancellation or variation. Unless otherwise agreed, the Company must also purchase Goods and/or Services which have actually been provided by Supplier but not delivered or completed by Supplier and work in progress and other materials produced or acquired by Supplier to manufacture the Goods or perform the Services but only to the extent to which such items cannot be used by Supplier producing goods and/or services for itself. Save as expressly set out in this clause, the Company will have no liability to Supplier for cancelling or varying the Purchase Contract.
- (c) To the extent the Company provides Supplier with forecasts of the Goods or Services that the Company may order from Supplier, Supplier acknowledges and agrees that such forecasts are estimates only, are not binding on the Company and are subject to change but Supplier must, at all times, be able to meet the forecasts by maintaining sufficient stocks of the Goods and being prepared to perform the Services as required by the forecasts.

11. Deduction & Set-Off

The Company may deduct or set-off against any amount payable to Supplier any amount payable by Supplier to the Company, including but not limited to any amount due by Supplier for Goods or Services rejected by the Company or for warranty claims made by the Company or by its customers that relate to the Goods or Services.

12. Notification of certain events

Supplier must promptly notify the Company in writing if any of the following events occur or is likely to occur to Supplier:

- (a) a change in trade name, or place of business;
- (b) change in the ownership or control of Supplier;
- (c) the sale or transfer of all or any part of Supplier's business;
- (d) the acquisition by any competitor of the Company of any interest of any kind in the ownership of Supplier;
- (e) an Insolvency Event concerning Supplier or a Related Body Corporate; and
- (f) any other matter or thing which may affect Supplier's ability or capacity to supply the Goods to or perform the Services for the Company.

13. Termination

- (a) In addition to termination rights set out elsewhere in these Terms and Conditions, the Company may terminate any applicable Purchase Contract by written notice to Supplier if:
 - (1) Supplier is in default of any of its obligations set out in the Purchase Contract (including these Terms and Conditions) that is not capable of remedy, or if capable of remedy is not remedied within 30 days of written notice by the Company of such default;
 - (2) Supplier breaches any warranties Supplier has provided under these Terms and Conditions;
 - (3) an event in **clause 12**, has occurred in relation to Supplier other than a change of trade name or place of business;
 - (4) an Insolvency Event has occurred in relation to Supplier or a Related Body Corporate of Supplier except if a stay on enforcing rights under Part 5.1 of the Act applies; or
 - (5) a Material Adverse Change has occurred in relation to the Company.

- (b) Upon termination under this **clause 13**:
- (1) the Company will have the right to withhold any payment for any Goods not yet delivered or Services not yet completed by Supplier;
 - (2) Supplier will be liable to the Company for any incidental or consequential losses incurred by the Company as a result of Supplier's default under these Terms and Conditions; and
 - (3) Supplier must return the Company Tools and grant to the Company an irrevocable licence to enter Supplier's premises for the purpose of taking possession of the Company Tools.
- (c) Supplier does not have any claim whatsoever at law or equity against the Company if the Company cancels an order under this **clause 13** or otherwise.

14. Title and risk

- (a) Title to the Goods (including any instalment of the Goods) passes to the Company on the earlier of the payment for, or the delivery of the Goods under a Purchase Contract.
- (b) Risk in the Goods will pass according to the INCOTERM elected under the Purchase Contract.
- (c) Where no INCOTERM is elected under the Purchase Contract, risk in the Goods will pass to the Company upon the Company taking delivery of the Goods and the Goods having been inspected and accepted by an authorised representative of the Company. Where Goods are delivered in instalments, the risk in the Goods subject to a particular instalment pass to the Company on delivery and acceptance of that instalment.
- (d) The passing of title and risk in the Goods will be without prejudice to any right of rejection which the Company is entitled under these Terms and Conditions.
- (e) Neither the payment by the Company of the price for the Goods nor the delivery of the Goods, constitutes acceptance of the Goods, even if title in the Goods passes to the Company under clause 14(a).

15. Insurance

Supplier must maintain at its sole expense insurance with reputable and financially responsible insurance companies, which adequately covers Supplier's liability against the Company and third parties for any incidental and consequential loss or damage arising out of or incidental to any recall campaign pursuant to defective Goods or Services or Goods or Services suspected of being defective. The Company is entitled to require specific insurance coverage and amounts be taken out by Supplier. The Company may request to see, and Supplier will be required to produce within 48 hours, evidence that it has complied with this clause. If the Company consents to Supplier using sub-contractors, such sub-contractors must hold and maintain the same insurance required under this **clause 15**.

16. Intellectual Property

- (a) The Company retains the Intellectual Property Rights in any Technical Materials provided to Supplier under the Purchase Contract.
- (b) In return for the payment of the purchase price for the Goods and/or Services, Supplier assigns to the Company all Intellectual Property Rights in any Technical Material created by Supplier or on Supplier's behalf for the purpose of the Purchase contract other than any pre-existing Intellectual Property Rights of Supplier. Supplier must execute, procure and deliver to the Company all assignments and any other documentation required by the Company to give effect to this **clause 16**.

17. Confidentiality

Unless otherwise required by Law, Supplier must keep confidential the terms of the Purchase Contract (including but not limited to prices), these Terms and Conditions and all confidential information it receives from the Company's or which relates to the Services or the Company's business, Intellectual Property Rights or other products. Supplier must not make any public announcements or disclosure in relation to the Goods and/or Services, these Terms and Conditions or its relationship with the Company without the Company's prior written consent. The obligations of this **clause 17** continue to apply after the fulfilment of any part of the Purchase Contract or termination or cancellation of the Purchase Contract.

18. Force Majeure Event

- (a) Any delay or failure by either party to perform its obligation will be excused if, and to the extent that, it is caused by Force Majeure Event, provided notice of such delay or failure (including the anticipated duration of the delay or failure) is given by the affected party to the other party as soon as possible after the Force Majeure Event (but in no event more than 3 days thereafter).
- (b) The occurrence of a Force Majeure Event does not relieve the affected party from performing its obligations:
 - (1) if the delay or failure by the affected party in the performance or the occurrence of a Force Majeure Event could have been prevented by reasonable precautions taken by the affected party; or
 - (2) if the Force Majeure Event results from any intentional act or omission on the part of the affected party, except to the extent such fault was itself caused by a Force Majeure Event.
- (c) In addition, Supplier, at its expense must:
 - (1) take such actions as are necessary to ensure the supply of Goods and/or Services to the Company for a period of at least 30 days during any anticipated labour disruption or resulting from the expiration of Supplier's labour agreements or contracts;

- (2) use all reasonable endeavours to avoid, remove or overcome the cause of the Force Majeure Event and resume and perform its obligations (to the extent the obligations were delayed or otherwise prevented) under the Purchase Contract as soon as possible;
 - (3) use reasonable endeavours to continue to perform the affected obligations, whether by way of a work-around or other methods agreed with the other party;
 - (4) otherwise remedy the Force Majeure Event to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible;
 - (5) promptly and diligently act to mitigate the Force Majeure Event and its effect; and
 - (6) take all reasonable steps to mitigate any Losses caused to the other party.
- (d) If requested by the Company, Supplier must, within 10 days, provide adequate assurances that the delay will not exceed 30 days. If the delay lasts more than 30 days, or Supplier does not provide adequate assurance that the delay will cease within 30 days, the Company may immediately terminate the relevant Purchase Contract without liability by providing written notice to Supplier.

19. Indemnity and limit of liability

Supplier indemnifies the Company against all liabilities which the Company suffers or incurs as a direct or indirect result of any of the following:

- (a) a breach of the Purchase Contract by Supplier, including any failure to deliver the Goods and/or Services in accordance with the Purchase Contract;
- (b) personal injury to, or illness or death of, any person (including Supplier's officers, directors, employees, agents, representatives, contractors or subcontractors, the Company's officers, directors, employees, agents, representatives, contractors or subcontractors or a third party) in connection with the supply under the Purchase Contract;
- (c) damage to any property (including to any property of Supplier, the Company or a third party) caused or contributed to by an act or omission of Supplier or in connection with the supply under the Purchase Contract;
- (d) any wrongful, fraudulent, unlawful or negligent act or failure to act by Supplier;
- (e) any injury to, or death of, any person or any loss of, or damage to, any property caused by or arising in connection with the supply under the Purchase Contract;
- (f) any misleading or deceptive conduct by Supplier or any of its representatives;

except to the extent the relevant liability was caused directly by the Company.

20. Compliance with Laws

Supplier must comply at all times with all requirements of any Laws of Victoria, Australia, or of the country of origin of the Goods and/or Services, applying to the Goods and/or Services including, but not limited to, the manufacture, labelling, transportation, importation, exportation, licensing, approval or certification of the Goods and/or Services and all other Laws from which liability may accrue to the Company from violation and Supplier agrees to defend, protect and completely indemnify (including legal expenses on the requisite hourly basis set by the Company's lawyers) the Company, its successor and assigns and any Related Body Corporate of the Company from and against any claim arising from any breach of this **clause 20** by Supplier.

21. Claims

Any claim that the Company has not complied with its requirements under the Purchase Contract or these Terms and Conditions must be brought by Supplier within a reasonable time.

22. Governing law

These Terms and Conditions and any Purchase Contract is governed by the Law of the State of Victoria without giving effect to international principles of the conflict of laws and Supplier and the Company expressly exclude the application of the 1980 United Nations Convention on Contracts for the International Sale of Goods with respect to sales covered by these Terms and Conditions or a Purchase Contract. The Company and Supplier submit to the non-exclusive jurisdiction of the Courts of Victoria.

23. Dispute resolution

(a) In the case of a dispute between the parties, the following process for resolution will be followed:

- (1) the party claiming that a dispute has arisen must promptly provide written notice (**Dispute Notice**) to the other party setting out the details of the dispute including what the party wants the other party to do to resolve it;
- (2) senior representatives of each party must attend an internal management conference within 14 days from the Dispute Notice and attempt to resolve the dispute in good faith;
- (3) if the parties are unable to resolve the dispute within a further 14 days then the parties must attend mediation conducted in accordance with Guidelines for Commercial Mediation issued from time to time by the ADC and in force at the date of the Dispute Notice;
- (4) if the party making the claim remains dissatisfied after the meeting convened under **clause 23(a)(2)**, or at any time during or at the conclusion of any mediation held pursuant to **clause 23(a)(3)**, that party may then institute proceedings against the other party.

- (b) For the purposes of **clause 23(a)**:
 - (1) the language of the dispute resolution will be English;
 - (2) the venue of the dispute resolution will be Australia;
 - (3) each party will bear their own costs and one-half of the costs of any mediation;
 - (4) each party is entitled to legal representation at all stages; and
 - (5) the process set out in **clause 23(a)** will not exclude the rights of the parties to seek urgent interlocutory relief.

24. Assignment

- (a) The Company is entitled to assign any rights, benefits or duties under the Purchase Contract to a Related Body Corporate without requiring the consent of Supplier.
- (b) Supplier will not assign or delegate its rights or obligations under the Purchase Contract without the prior written consent of the Company. For these purposes any change in Control from the date of the relevant Purchase Contract will require the prior written consent of the Company. For the purposes of this clause, **Control** means, in relation to Supplier, the ability of any person directly or indirectly to exercise effective control over Supplier (including the ability to determine the outcome of decisions about the financial operating and other policies of Supplier) by virtue of the holding of voting shares, units or other interest in Supplier by any other means.

25. Rights are cumulative

The rights of the Company under these Terms and Conditions are cumulative and additional to any other rights the Company may have at Law or in equity.

26. Severability

If any term or condition or part of these Terms and Conditions is illegal, unenforceable or invalid, those Terms and Conditions or part of the Terms and Conditions are to be treated as removed from these Terms and Conditions, but the rest of these Terms and Conditions are not affected.

27. Waiver

The Company will not be deemed to have waived any of its rights or remedies under these Terms and Conditions or at Law by allowing any time or indulgence or by not exercising any right or remedy arising out of any default by Supplier.

28. Variation and replacement

- (a) No variation of the Purchase Contract (other than in accordance with **clause 10**) will be of any force unless it is in writing and signed by both parties.

- (b) The Company may at any time replace or amend these Terms and Conditions, such replacement to be effective from the date specified by the Company in its notice to Supplier advising of the replacement or amendment.

29. Further assurances

Supplier must do everything reasonably requested by the Company to give effect to these Terms and Conditions and any relevant Purchase Contract and the transactions contemplated by them.

30. Other suppliers

- (a) Nothing in these Terms and Conditions will in any way limit the ability of the Company to obtain goods or services which are equivalent to the Goods or Services from other suppliers.
- (b) Unless otherwise agreed under a Purchase Contract, the Company will be under no obligation to submit orders for Goods or Services to, or purchase Goods or Services from, Supplier.

31. Sub-contracting

Supplier must not sub-contract the performance of any of its obligations under these Terms and Conditions or the Purchase Contract to any other party without the prior written consent of the Company.

32. Anti-bribery laws

Supplier must:

- (a) comply with all laws relating to anti-bribery and anti-corruption and all policies of the Company relating thereto as notified to Supplier from time to time and not contravene any such law or policy;
- (b) promptly notify the Company if any request or demand for financial or other advantage of any kind is received by Supplier in connection with the provision of the Goods or Services or if any foreign public official is appointed as an officer or employer of or acquires an interest in Supplier;
- (c) have and enforce as appropriate its own policies and procedures to ensure compliance with this **clause 32**; and
- (d) ensure that any person for whom the Goods or Services are to be provided complies with this **clause 32**.

33. Access and Safety

If Supplier is required to enter the premises of the Company in order to deliver the Goods or Services:

- (a) the Company will not be responsible for any damage done to Supplier's property or that of Supplier's employees or representatives or for any

personal injury sustained by any of Supplier's employees or representatives occurring on the Company's premises;

- (b) Supplier unconditionally and irrevocably releases the Company from that responsibility and agrees to indemnify the Company against any loss which the Company or any of its Related Bodies Corporate suffer as a result of any third party bringing an action in respect of such circumstances.

34. Modern Slavery

- (a) Supplier represents and warrants to the best of its knowledge and belief that neither Supplier nor any of its directors, officers, employees, agents, representatives, contractors or subcontractors engage in Modern Slavery.
- (b) Supplier must:
 - (1) have and maintain its own policies and procedures that are intended to ensure compliance with the warranty contained in clause 34(a) including Modern Slavery related due diligence procedures for its suppliers, contractors and subcontractors;
 - (2) at the reasonable written request of the Company promptly provide all information required to enable the Company to comply with its reporting obligations with respect to Modern Slavery; and
 - (3) if it becomes aware of any actual, reasonably suspected or anticipated Modern Slavery practices in the operations and supply chains used in the performance of the agreement:
 - (i) promptly notify the Company in writing; and
 - (ii) take all reasonable steps to remove these practices or remediate any adverse impacts caused or contributed to by Supplier from these practices in accordance with the Guiding Principles on Business and Human Rights published by the United Nations, providing the Company regular updates of its progress or as otherwise requested by the Company.

35. Labour hire licence

If Supplier is required to maintain a licence under a labour hire licensing scheme that is in force in the State or Territory in which the Goods and/or Services are provided, Supplier must:

- (a) provide the Company with a copy of the licence (including any subsequent renewals or variations of the licence); and
- (b) advise the Company immediately of the occurrence of any event that has resulted in, or may result in, the loss, suspension or alteration of the conditions of the licence,

consistent with the relationship between the relevant contractor and the Company as being a genuine subcontracting arrangement.

36. GST

- (a) Words or expressions used in this clause that are defined in *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)* have the same meaning given to them in that Act.
- (b) Unless otherwise stated, any amount specified in the Purchase Contract as the consideration payable for any taxable supply includes any GST payable in respect of that supply.
- (c) Each party agrees to do all things, including providing valid tax invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with the Purchase Contract.
- (d) If a third party makes a taxable supply and the Purchase Contract requires a party to the Purchase Contract (**the payer**) to pay for, reimburse or contribute to (**pay**) any expense or liability incurred by the other party to that third party for that taxable supply, the amount the payer must pay will be the amount of the expense or liability plus the amount of any GST payable in respect thereof but reduced by the amount of any input tax credit to which the other party is entitled in respect of the expense or liability.
- (e) If an adjustment event arises in relation to a taxable supply made by a party under the Purchase Contract (**Supplier**), the amount paid or payable by the party to whom the taxable supply is made (**Recipient**) pursuant to clause 36(b) will be amended to reflect this and a payment will be made by the Recipient to Supplier or vice versa as the case may be.
- (f) This clause does not merge on completion and will continue to apply after expiration or termination of this the Purchase Contract.

37. Civil Liability Act

To the extent permitted by law, the operation of Part 4 of the Civil Liability Act 2002 (NSW) (and any similar provision under any similar legislation in any other Australian State) is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to this agreement, however such rights, obligations or liabilities are sought to be enforced.